
(2001) 04 JH CK 0007
In the Jharkhand High Court
Case No : CWJC No. 1122 of 1999 (R)

Najmussabah

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 90 FLR 951

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Sumir Prasad, for the Appellant; R.K. Marathia, GP 2, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard Mr. Sumir Prasad, learned counsel for the petitioner and Mr. RK.Marathia, learned GP 2.

2. In this writ application the petitioner" has prayed for issuance of appropriate direction upon the respondents, particularly respondent No. 4, the District Superintendent of Education, Hazaribagh to approve the appointment of the petitioner and to pay salary from the date of her joining i.e. 7.9.1993.

3. The petitioner"s case is that her father late Hamid Ali Khan was working as a teacher in the school, the petitioner"s father died on 28.1.1992 and since nobody was there to maintain the family the petitioner having B.Sc. qualification applied for appointment on compassionate ground as Assistant Teacher on the said school. The application was duly recommended by the respondent No. 5, the Secretary of the school and then the matter was placed before the Committee. The Managing Committee of the school took a decision on 22.9.1992 to appoint the petitioner on compassionate ground as Assistant Teacher against the sanctioned vacant post. A copy of the decision has been annexed as Annexure 2 to the writ application. It is contended that the decision of the Managing

Committee was sent to the respondent No. 4, the District Superintendent of Education for formal approval and the respondent No. 4, vide his letter dated 26.2.1993 intimated the . Secretary of the school that it is within the jurisdiction of the Managing Committee to take a decision. The Managing Committee, therefore, finally issued appointment letter dated 4.9.1993 appointing the petitioner on compassionate ground. It is stated that the petitioner joined the school and has been working since then. The petitioner's further case is that the letter forwarded to respondent No. 4 for approval of appointment was sent to the Director of Primary Education, Bihar, who vide his letter dated 20.3.1996, directed to give approval if the appointment has been made after following all the procedure of appointment on compassionate ground. A copy of the letter dated 20.3.1996 has been annexed as Annexure 8 to the writ application.

4. A counter-affidavit has been filed by the respondent Nos. 3 and 4. The case of respondent is that since it was a case of compassionate appointment in a non-Government school and there has been no such provision of appointment on compassionate ground, so the case was referred by respondent No. 4 to respondent No. 2 for guidelines. The respondent No. 2, the Director Primary Education instructed that it is upto the District Superintendent of Education to ensure that a candidate has been appointed against a post sanctioned by the Government and if it is done according to the procedure, her service is to be approved. It is further stated that since the recommendation of the District Compassionate Committee has not been made for appointment of the petitioner, there would be no question of its approval.

5. After having heard learned counsels for the parties and after perusal of the affidavits, a the question falls for consideration is as to whether the rules and procedure of the Government for appointment on compassionate ground shall also be available to the teachers of non-Government school or minority institutions.

6. The petitioner, in paragraph 13 of the writ application, very categorically stated that the Government took a decision vide its letter No. 1641 dated 8.8.1991 to delete the condition for appointment of Assistant teacher that the teacher must be a trained teacher. It has also been specifically pleaded that vide circular dated 5.10.1991 issued by the State Government it has been mentioned in clause 11 that the circular with regard to appointment has to be followed by all the departments, local bodies including the Managing Committee and other institutions, it is interesting to point out that this paragraph has been replied in paragraph 9 of the counter affidavit filed by respondent No.s 3 and 4, namely, the Regional deputy Director of Education and District Superintendent of Education, Hazaribagh. Para 9 of the counter affidavit reads as under :

"9. That with regard to the statement made in paras 10 to 13 has been replied in para 1 of this draft affidavit."

Para 1 of the counter-affidavit reads as under :

"That I am at present working and posted as District Superintendent of Education, Hazaribagh and, as such, I am well acquainted with the facts and circumstance of this case."

7. From these two paragraphs of the counter-affidavit it is clear that neither the counter-affidavit has been properly drafted nor the District Superintendent of Education, Hazaribagh who has sworn the affidavit has gone through the affidavit or even understood what stand he has been taking in the counter-affidavit.

8. The circular dated 5.10.1991 has been annexed as Annexure 11 to the reply to the counter-affidavit filed by the petitioner. Clause 11 of the circular provides that the benefit of the circular for appointment on compassionate ground available to the Government employees, shall also apply in all local bodies. Corporation and non-government institutions. The Managing Committee, after following the procedures provided in the circular, appointed the petitioner on compassionate ground in 1993 and the matter was forwarded to the respondents for approval. The District Superintendent of Education, by his letter referred to above, requested the Director, Primary Education, Bihar, Patna to take necessary decision for payment of salary. Respondent No. 2, vide his letter dated 20.3.1996, directed respondent No. 4, the D.S.E. Hazaribagh to give approval if the appointment has been made after following the procedures of appointment on compassionate ground.

9. In a separate counter-affidavit filed by respondent No. 6, the Deputy Commissioner, Hazaribagh, it is stated that the Deputy Commissioner has no concern with any appointment in such schools. It is further stated that the employees working in the minority school are not entitled to any benefit under compassionate appointment.

10. On the basis of the affidavits filed by the parties and the documents annexed therewith the admitted facts which emerge are that the school in question is a minority Government aided institution and the management of the school is vested in the Managing Committee. It is also not disputed that the Managing Committee considered the case of the petitioner for appointment on compassionate ground in accordance with the procedures provided in the circular and appointed her in 1993 subject to approval of the Education Department. It is also clear that the Director, Primary Education, Bihar, Patna took a decision that if the appointment of the petitioner has been made by the Managing Committee after following the procedures of compassionate appointment then necessary approval be granted and direction be issued for payment of salary.

11. Regard being had to all these facts I am of the opinion that the petitioner is entitled to the benefits of the Circular dated 5.10.1991 and her appointment on compassionate ground count of the death of her father justified.

12. This writ application is, therefore, allowed and the respondents, particularly respondent No. 4, the District Superintendent of Education, Hazaribagh is directed to approve the appointment of the petitioner and pass appropriate order

for payment of salary. Such decision must be taken by respondent No. 4 within a period of 30 days from the date of receipt of a copy of this order.

13. Application allowed.